



This document is scheduled to be published in the Federal Register on 04/23/2014 and available online at <http://federalregister.gov/a/2014-09231>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 14, 15, and 52

[FAR Case 2014-001; Docket No. 2014-0001; Sequence No. 1]

RIN 9000-AM78

**Federal Acquisition Regulation; Incorporating Section K in
Contracts**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to standardize the incorporation by reference of representations and certifications in contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before **[Insert 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2014-001 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by

searching for "FAR Case 2014-001". Select the link "Comment Now" that corresponds with "FAR Case 2014-001." Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2014-001" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014-001, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Glover, Sr., Procurement Analyst, at 202-501-1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2014-001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the language at FAR subpart 4.12, Representations and Certifications,

and add a new clause at FAR 52.204-X to standardize the incorporation by reference of representations and certifications in contracts. In the Uniform Contract Format, section K is the "Representations, certifications, and other statements of offerors or respondents". Currently, FAR 15.204-1 requires incorporation by reference of section K into the contract.

Additionally, the standard contract award forms are inconsistent regarding the reference to Section K. Standard Forms (SF) 26 and 33, and Optional Form 307 each have a block for the page numbers where Section K is located in the contract, whereas, the other solicitation/award forms (SFs 252, 1442, 1447, and 1449) are silent.

This case revises the language at FAR subpart 4.12, Representations and Certifications, and adds a new clause at FAR 52.204-X to standardize the incorporation by reference of representations and certifications in contracts regardless of which contract award form is used. The commercial items clause 52.212-4 will have a new paragraph (v) to cover this issue for commercial items.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it only standardizes the incorporation by reference of representations and certifications in contracts.

However, an Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

The standard process is for the offeror to submit the representations and certifications with each proposal to demonstrate compliance with a variety of statutes and regulations. The proposed rule does not revise, change or impact the existing representations and certifications submissions done by small entities; therefore, this proposed rule will have no significant impact on a substantial number of small entities. There are no recordkeeping, reporting, or other compliance requirements

associated with the proposed rule. The rule does not duplicate, overlap, or conflict with any other Federal rules.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2014-001), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 14, 15, and 52

Government procurement.

Dated: April 17, 2014.

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 14, 15, and 52 as set forth below:

1. The authority citations for 48 CFR part 4, 15, and 52 continue to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

2. Amend section 4.1200 by-

a. Removing from the end of paragraph (a) the word "and";

b. Removing from the end of paragraph (b) the period and adding "; and" in its place; and

c. Adding paragraph (c) to read as follows:

4.1200 Scope.

* * * * *

(c) Incorporate by reference the contractors' representations and certifications in the awarded contract.

3. Amend section 4.1201 by adding paragraph (d) to read as follows:

4.1201 Policy.

* * * * *

(d) The contracting officer shall incorporate the representations and certifications by reference in the

contract (see 52.204-X, or for commercial items see 52.212-4(v)).

4. Amend section 4.1202 by—

a. Redesignating paragraphs (a) through (bb) as paragraphs (1) through (28), respectively;

b. Designating the introductory text as paragraph (a); and

c. Adding a new paragraph (b) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(b) The contracting officer shall insert the clause at 52.204-X, Incorporation by Reference of Representations and Certifications, in solicitations and contracts.

PART 14—SEALED BIDDING

5. The authority citation for part 14 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

6. Amend section 14.201-1 by adding a sentence at the end of paragraph (c) to read as follows:

14.201-1 Uniform contract format.

* * * * *

(c) * * * The representations and certifications are incorporated by reference in the contract by using

52.204-X (see 4.1202(b)) or for commercial items 52.212-4(v) .

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PART 15—CONTRACTING BY NEGOTIATION

7. Amend section 15.204-1 by revising the last sentence of paragraph (b) to read as follows:

15.204-1 Uniform contract format.

* * * * *

(b) * * * The representations and certifications shall be incorporated by reference in the contract by using 52.204-X (see 4.1202(b)) or for commercial items 52.212-4(v) .

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-8 [Amended]

8. Amend section 42.204-8 by removing from the introductory text "4.1202" and adding "4.1202(a)" in its place.

9. Add section 52.204-X to read as follows:

52.204-X Incorporation by Reference of Representations and Certifications.

As prescribed in 4.1202(b), insert the following clause:

INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DATE)

The contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

10. Amend section 52.212-4 by revising the clause heading; and adding paragraph (v) to read as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (DATE)

* * * * *

(v) Incorporation by reference. The contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

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[BILLING CODE 6820-EP]

[FR Doc. 2014-09231 Filed 04/22/2014 at 8:45 am; Publication Date:
04/23/2014]